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9 Attorneys for Defendants,
10 LISETTE ACKERBERG LIVING TRUST, dated January 14, 1998,
and LISETTE ACKERBERG, individually and as trustee of the
11 LISETTE ACKERBERG TRUST

12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
13 **COUNTY OF LOS ANGELES – CENTRAL DISTRICT**

15 ACCESS FOR ALL, a California non-
profit corporation,

16 Plaintiff,

17 vs.

18 LISETTE ACKERBERG TRUST,
19 a Trust, LISETTE ACKERBERG,
individually and as Trustee of the
20 LISETTE ACKERBERG TRUST, and
DOES 1-10, Inclusive,

21 Defendants.
22
23

Case No. BC405058

**SETTLEMENT AGREEMENT AND
STIPULATION FOR ENTRY OF
JUDGMENT**

Action Filed: January 5, 2009

Assigned for all Purposes to:
The Honorable Rolf M. Treu
Department 58

24 This Settlement Agreement and Stipulation for Entry of Judgment ("Agreement")
25 is entered into by and between Plaintiff Access for All and Defendants Lisette Ackenberg
26 Living Trust, dated January 14, 1998 ("Trust"), and Lisette Ackenberg, individually and
27 as Trustee of the Trust (collectively, "Ackenberg"). Access for All and Ackenberg are
28 collectively referred to as the "Parties."

CONFORMED COPY
OF ORIGINAL FILED
Los Angeles Superior Court

JUN 19 2009

John A. Clarke, Executive Officer/Clerk

By E. C. Villa Deputy

RECITALS:

WHEREAS, the Trust is the owner of the real property located at 22466 Pacific Coast Highway in the City of Malibu, County of Los Angeles, California ("Ackerberg Property").

WHEREAS, Access for All is a California non-profit public benefit corporation whose mission is to facilitate and improve the public's ability to access public lands and the California seashore.

WHEREAS, in furtherance of its mission, Access for All acquires real property and easements through gifts, purchases and transfers, and develops and maintains public accessways for the benefit of the People of the State of California.

WHEREAS, in 1984 Lisette Ackerberg and her husband (now deceased) Norman Ackerberg applied to the California Coastal Commission ("Coastal Commission") for a Coastal Development Permit ("CDP") to demolish an existing house, guest house and swimming pool and to construct a new single-family residence and swimming pool and to renovate an existing tennis court on the Ackerberg Property.

WHEREAS, on January 24, 1985, the Coastal Commission approved the proposed development and granted CDP No. 5-84-754, subject to, among others, a condition requiring an offer to dedicate a 10-foot wide vertical access easement ("Ackerberg OTD") along the eastern, or downcoast, side of the Ackerberg Property.

WHEREAS, in approving the proposed development and granting CDP No. 5-84-754, the Coastal Commission expressed its intent that another vertical access easement, a County of Los Angeles dedicated vertical accessway ("County's dedicated accessway"), is within 500 feet of the project; that as a matter of policy, publicly owned vertical accessways should be improved and opened to public use before additional offers to dedicate vertical accessways are opened; that once a public accessway has been improved and opened for public use, the Commission's policy would be to permit extinguishment or termination of the offer to dedicate; and that as part of its public access program in the Malibu/Santa Monica Mountains Local Coastal Program ("LCP"), procedures would be

1 developed to implement that directive; and on or about December 12, 1986, the
2 Commission certified the Land Use Plan for the Malibu/Santa Monica Mountains LCP
3 with a policy (P56-16) that there be dedication of one vertical access "per 1,000 feet of
4 beach frontage."

5 WHEREAS, on or about October 29, 1973, the County of Los Angeles required
6 and accepted the County's dedicated accessway "on behalf of the public" as a condition
7 of approving Tract Map No. 29628, which authorized the conversion of an apartment
8 building at 22548 Pacific Coast Highway to condominiums.

9 WHEREAS, the County's dedicated accessway was intended to provide public
10 access from Pacific Coast Highway to the mean high tide line, but now serves
11 additionally as a potential key trail connector between the California Coastal Trail on the
12 beach and that portion of the Coastal Slope Trail located in the area of the Santa Monica
13 Mountains above Carbon Beach.

14 WHEREAS, the Ackerbergs constructed the development approved in CDP No. 5-
15 84-754, and recorded the Ackerberg OTD on or about April 4, 1985.

16 WHEREAS, in 2003 Access for All applied to the Coastal Commission to accept
17 the Ackerberg OTD and to open, operate, and manage the resulting easement
18 ("Ackerberg easement"), which application was subsequently granted and memorialized
19 in an instrument recorded on December 17, 2003, and contacted Norman and Lisette
20 Ackerberg by letter, dated December 24, 2003, requesting their participation in removing
21 obstructions and opening the Ackerberg easement.

22 WHEREAS, on March 29, 2006, an adjoining property owner at 22446 Pacific
23 Coast Highway, whose property shares the boundary of the easement on the Ackerberg
24 property, filed an action against the Coastal Commission, the State Coastal Conservancy
25 and Access for All, alleging that the Commission failed to provide him with public notice
26 of the Ackerberg's application for Coastal Development Permit.

27 WHEREAS, the State agencies and Access for All prevailed in that action in the
28 trial court and on appeal, and the State Supreme Court denied review on July 9, 2008.

1 WHEREAS, on September 25, 2008, Access for All wrote Lisette Ackenberg
2 requesting removal of certain improvements located in the Ackenberg easement by
3 January 1, 2009, and advising that Access for All intended to open the Ackenberg
4 easement on that date and would file a lawsuit if the improvements were not removed by
5 that date.

6 WHEREAS, on January 6, 2009, Access for All commenced the instant action
7 ("AFA Action") which alleges that because Ackenberg has not removed those
8 improvements, she has violated the requirements of the California Coastal Act ("Coastal
9 Act"; Pub. Resources Code, § 30000 et. seq.) and committed a trespass and nuisance.
10 The AFA Action seeks declaratory and injunctive relief and monetary penalties, as
11 provided in the enforcement provisions of the Coastal Act and Public Resources Code
12 sections 30803, 30820(a) and (b).

13 WHEREAS, Ackenberg has answered the complaint filed in the AFA Action, and
14 contends that her actions at all times have been lawful and proper, and specifically that
15 she has not violated the provisions of the Coastal Act or committed a trespass or
16 nuisance.

17 WHEREAS, the Parties agree that Access for All is a "person" that is authorized
18 under the Coastal Act to file an enforcement action and seek judicial relief pursuant to the
19 enforcement remedies set forth in the Coastal Act.

20 WHEREAS, the Parties have jointly agreed (a) to file separate litigation to enforce
21 the County's dedicated accessway and require that it be improved and opened for public
22 access; (b) if the lawsuit is successful and the County's dedicated accessway is thereafter
23 improved and opened, to seek and obtain from the Coastal Commission an amendment of
24 CDP No. 5-84-754 to terminate or extinguish the Ackenberg easement; and (c) if the
25 lawsuit is not successful, to seek and obtain from the Coastal Commission an amendment
26 of CDP No. 5-84-754 to facilitate improvements necessary to effectuate and operate the
27 Ackenberg easement.

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WHEREAS, the Parties continue to believe that they will prevail should this matter proceed to trial. Nevertheless, continuation of the lawsuit will result in considerable and unnecessary expense and expenditure of time and effort by the Parties. Accordingly, after a considerable amount of discussion and negotiation, both before and after the filing the Action, the Parties have decided to settle and compromise their differences in the manner prescribed by and set forth hereunder in this Agreement. Further, the Parties believe and intend that this Agreement and the various actions it contemplates best serves the public interest, provides for an orderly resolution of the Coastal Act violation alleged in the Complaint filed, and will provide a fair and equitable resolution of the dispute while carrying out the intent of the Coastal Commission in approving the Ackerberg residence and granting CDP No. 5-84-754.

AGREEMENT

NOW THEREFORE, in consideration of the mutual covenants and conditions described below, and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the Parties agree as follows:

I. ACTION TO ENFORCE THE COUNTY'S DEDICATED ACCESSWAY:

1.1 Within five (5) days after the entry of judgment, Access for All shall file an action in the Los Angeles Superior Court against the County of Los Angeles, the Malibu Outrigger Homeowners Association, and the owners of the land underlying the County's dedicated accessway for declaratory and injunctive relief, trespass, nuisance, and such other causes of action as may be appropriate to enforce the County's dedicated accessway ("County Action"). Access for All shall be represented in the County Action by the following counsel: Richards, Watson & Gershon ("RW&G"), Diane R. Abbitt, David J. Weinsoff and J. Timothy Nardell. Ackerberg shall have the right to substitute new counsel for RW&G and/or Diane R. Abbitt, and Access for All shall have the right to substitute new counsel for David J. Weinsoff and/or J. Timothy Nardell. Access for All

has separately executed a conflict waiver to permit such representation by RW&G and Diane R. Abbitt. RW&G, or counsel substituted for RW&G, shall serve as lead counsel in all matters relating to the County Action, except that David J. Weinsoff, or counsel substituted for David J. Weinsoff, shall serve as lead counsel for all matters related to publicity, which shall be consistent with the terms of this Agreement and the position of Access for All in the County Action. Access for All agrees to actively prosecute the County Action to and including the entry of a final judgment in the action, including any and all settlement discussions and proceedings in the trial and California appellate courts.

1.2 Ackerberg shall fund all attorneys' fees and court costs incurred by Access for All in the County Action.

1.3 In the event Access for All is the prevailing party in the County Action, it shall file a motion to recover all attorneys' fees and court costs incurred, including but not limited to attorneys' fees pursuant to Code of Civil Procedure section 1021.5, which monies shall be used to reimburse Ackerberg for funds used to pay attorneys' fees.

2. PAYMENT OF ATTORNEY'S FEES TO ACCESS FOR ALL:

Within ten (10) days of the entry of judgment in the AFA Action, Ackerberg shall pay, or cause to be paid, to Access for All the amount of ten thousand five hundred dollars (\$10,500.00) to reimburse Access for All for its attorneys' fees and costs in connection with the AFA Action. The payment shall be made payable to "ACCESS FOR ALL," and shall be made by delivery of a certified check to counsel for Access for All.

3. PAYMENT OF FUNDS TO IMPROVE AND OPEN THE COUNTY'S DEDICATED ACCESSWAY :

If Access for All is successful in obtaining a settlement or final judgment in the County Action that results in removal of the encroachments within, and the opening of, the County's dedicated accessway, the Parties agree that Ackerberg shall fund, or cause to be funded, the improvement and opening of the County's dedicated accessway, provided such funding is not otherwise made available by the County of Los Angeles, the

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1 Malibu Outrigger Homeowners Association, or the owners of the land underlying the
2 County's dedicated accessway.

3 **4. EXTINGUISHMENT OF ACKERBERG EASEMENT AND**
4 **PAYMENT OF FUNDS TO MAINTAIN THE COUNTY'S DEDICATED**
5 **ACCESSWAY:**

6 4.1 If Access for All is successful in obtaining a settlement or final judgment in
7 the County Action that results in removal of the encroachments within, and the opening
8 of, the County's dedicated accessway, the parties agree that:

9 (a) Within twenty (20) days from the date of settlement or final
10 judgment, if required, Access for All will apply for a coastal development permit, to
11 improve and open the County's dedicated accessway and, upon receipt of the coastal
12 development permit, will improve and open the accessway with the funding provided
13 under Paragraph 3, above.

14 (b) Within twenty (20) days after the County's dedicated accessway is
15 improved and opened, Access for All and Ackerberg will jointly apply to the Coastal
16 Commission to amend CDP No. 5-84-754 to terminate or extinguish the Ackerberg
17 easement.

18 (c) At the time of the opening of the County's dedicated accessway,
19 Ackerberg shall pay, or cause to be paid, to Access for All, the sum of one hundred and
20 twenty-five thousand dollars (\$125,000.00). This private funding will be used to provide
21 five (5) years of support for maintenance and management of the County accessway.
22 During the current fiscal period in which traditional sources of public funding are
23 increasingly becoming limited, the County's dedicated accessway, if opened, will have a
24 dedicated source of funding ensuring that the public enjoys access to Carbon Beach,
25 consistent with the strict maintenance and management standards set by the Coastal
26 Commission, the State Coastal Conservancy, and Access for All under an agreed-upon
27 "management plan."

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(d) Pursuant to a written agreement to be entered into between Ackerberg and the State Coastal Conservancy, Ackerberg shall further pay, or cause to be paid, the sum of one hundred and twenty-five thousand dollars (\$125,000.00) to be deposited in such account as the State Coastal Conservancy deems appropriate to be used as follows: (1) through inter-agency agreement or otherwise, to provide funding and assistance to the Coastal Commission for public access and enforcement, or (2) if the Coastal Commission does not wish to accept the funds, to provide funding to Access for All for the maintenance and management of the County accessway, ensuring that Access for All has a full ten (10) years of support for the management and maintenance of the County's dedicated accessway.

5. ENFORCEMENT OF THE ACKERBERG EASEMENT:

5.1 If Access for All is not successful in obtaining a settlement or final judgment in the County Action that results in removal of the encroachments within, and the opening of, the County's dedicated accessway, or if lead counsel determines that the County Action should be voluntarily dismissed, within twenty (20) days of the settlement, entry of final judgment, or voluntary dismissal:

(a) The Parties shall jointly apply to the Coastal Commission to amend CDP No. 5-84-754 to improve the Ackerberg easement and to modify the approved "Public Vertical Access Easement Management Plan" ("Management Plan"), dated July 28, 2003, to include security measures acceptable to Ackerberg. All improvements to the Ackerberg easement not required by the Management Plan shall be funded by Ackerberg. Said application shall include, but not be limited to, the following:

(i) A design for a movable, lightweight, metal (stainless steel or an equivalent material) ramp with non-slip surface and stainless steel handrails on each side which shall provide a transition from the concrete slab to the sandy beach at times when the existing rock revetment impedes access to the beach. The movable ramp shall be designed and constructed in a manner that it may be secured and locked into place or removed and placed into storage. The ramp shall be designed by a civil engineer in

1 consultation with Access for All and shall be adequate to provide for safe pedestrian
2 access from the seaward edge of the concrete slab/walkway to the sandy beach whenever
3 the sand level is lower than the top elevation of the rock revetment and in a manner that
4 will accommodate any future changes in beach profile/sand level elevations over time,
5 and shall be ADA compliant.

6 (ii) A site plan identifying the removal and/or relocation of all
7 improvements within the easement area that will result in direct obstacles to public
8 access.

9 (iii) Security improvements, including, but not limited to, a
10 security wall consistent in height with the existing wall, a sunrise opening and sunset
11 closing gate located at the entrance to the Ackerberg easement on Pacific Coast Highway
12 which shall include a timed mechanism for automatically unlocking and locking and an
13 alarm system, and security lighting, consistent with the requirements of the City of
14 Malibu LCP, that permit public access on the Ackerberg easement while ensuring the
15 privacy and security of the Ackerberg Property.

16 (iv) A notation that except as otherwise permitted, the
17 applicant/landowner shall in no way obstruct or prevent the use of the Ackerberg
18 easement.

19 (b) Unless the Executive Director of the Coastal Commission grants
20 additional time for good cause, within ninety (90) days of the issuance of the Coastal
21 Development Permit Amendment by the Commission:

22 (i) Ackerberg shall remove and/or relocate all physical
23 improvements within the easement area that result in direct obstacles to public access.

24 (ii) Access for All shall install the concrete slab and movable
25 ramp. Use, operation, and maintenance of the ramp will be at the sole discretion and
26 control of Access for All.

27 **6. MUTUAL RELEASE OF CLAIMS:**

28 For and in consideration of the above terms, the parties agree as follows:

6.1. Ackerberg for herself and her employees and agents, fully and forever releases Access for All, its officers, employees, governing members, agents and attorneys from any and all liability, claims, demands, damages, punitive damages, disputes, suits, claims for relief and causes of action, whether known or unknown, foreseen or unforeseen, which directly or indirectly relate to any claims, facts or circumstances arising out of or alleged in the AFA Action.

6.2. Access for All for itself and its officers, governing members, employees and agents, fully and forever releases Ackerberg, her agents and/or attorneys from any and all liability, claims, demands, damages, punitive damages, disputes, suits, claims for relief and causes of action, whether known or unknown, foreseen or unforeseen, which directly or indirectly related to any claims, facts or circumstances arising out of or alleged in the AFA Action.

6.3 Except as otherwise provided in this Agreement, the Parties do not waive their respective rights and interests to any future enforcement of the California Coastal Act of 1976, Public Resources Code section 30000 et seq., or of the terms and conditions relating to the Ackerberg easement that occur after the execution of this Settlement Agreement and Stipulation For Entry of Judgment.

7. WAIVER OF THE BENEFITS OF CIVIL CODE SECTION 1542:

Having been fully apprised of the nature and effect of the provisions of Section 1542 of the California Civil Code, the Parties waive all rights which they may have against the other, both known and unknown with regard to the subject matter of this Agreement, which might otherwise exist by virtue of the provisions of Section 1542 which provides as follows:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR."

1 **8. WAIVER OF FINDINGS OF FACT, STATEMENT OF DECISION,**
 2 **CONCLUSIONS OF LAW, AND RIGHTS OF APPEAL:**

3 The Parties agree to waive findings of fact, conclusions of law, a statement of
 4 decision, and any and all rights of appeal from the judgment entered in this action.

5 **9. ENFORCEMENT OF SETTLEMENT AGREEMENT:**

6 The Parties stipulate, covenant and agree that the Agreement shall be enforceable
 7 by any judge of the Superior Court of the County of Los Angeles once Judgment is
 8 entered pursuant to C.C.P. sections 128(4) and 664.6.

9 **10. DUTY TO COOPERATE:**

10 The Parties agree to cooperate and operate in good faith in effectuating the terms
 11 and conditions of this Agreement. The Parties agree to support, both orally and in
 12 writing, the terms and conditions as set forth in this Agreement in any judicial proceeding
 13 or any administrative proceeding referred to in Paragraph 5.

14 **11. LEGAL ADVICE:**

15 Each Party has received independent legal advice from its attorneys with respect to
 16 the advisability of executing this Agreement and the meaning of the provisions hereof.
 17 The provisions of this Agreement shall be construed as to the fair meaning and not for or
 18 against any party based upon any attribution of such party as the sole source of the
 19 language in question, it being expressly understood and agreed that the Parties
 20 participated equally or had equal opportunity to participate in its drafting.

21 **12. COSTS AND EXPENSES:**

22 Except as otherwise provided in Paragraph 2, above, the Parties shall bear their
 23 own costs, expenses and attorneys' fees in connection with the AFA Action, and the
 24 negotiations and drafting of this Agreement. In any legal action or proceeding to enforce
 25 the terms of this Agreement, the prevailing party shall be entitled to recover all
 26 reasonable attorneys' fees, costs and expenses incurred therein, in addition to any other
 27 relief to which it or they may be entitled.

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13. ENTIRE AGREEMENT AND AMENDMENTS:

This Agreement constitutes the entire agreement between the Parties concerning the subject matter hereof. This Agreement supersedes any written or oral agreement(s) or representation(s) that preceded or may have preceded execution of this Agreement. The Parties have not relied upon any oral representation(s) in deciding whether to enter into this Agreement. This Agreement may be modified only by a writing signed by the Parties hereto.

14. SUCCESSORS AND ASSIGNS:

This Agreement and the settlement contained herein shall bind and inure to the benefit of the principals, agents, representatives, transferees, successors and assigns of the Parties hereto, and the judgment entered pursuant to this Agreement shall be recorded to give interested parties notice of the obligations herein placed on the owner of the Ackerberg property.

15. INTERPRETATION AND REPRESENTATION BY COUNSEL:

The terms of this Agreement are the product of arms-length negotiations between the Parties and their counsel, and no provision shall be construed against the drafter thereof. All Parties mutually warrant and represent that they have been represented by counsel of their own choosing in the negotiation and drafting of this Agreement, and that they fully understand its terms and conditions and voluntarily consent to all of the provisions herein.

16. NO LIABILITY:

It is understood and agreed that this Settlement Agreement and Stipulation for Entry of Judgment is the compromise of disputed claims, and that the terms and conditions recited hereinabove are not to be construed as an admission of liability on the part of the parties hereby released, and that said parties deny liability therefore and intend merely to avoid litigation.

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17. CHOICE OF LAW AND VENUE:

This Agreement shall be governed by and construed in accordance with the laws of the State of California. The venue for any disputes concerning this Agreement shall be in Los Angeles County, California.

18. COUNTERPARTS AND FACSIMILE SIGNATURES:

This Agreement may be executed in counterparts which, taken together, shall constitute one and the same agreement. This Agreement may also be delivered by facsimile transmission and in such event all facsimile signatures shall be deemed complete for all purposes hereof. The original executed counterparts shall be kept in the custody of Richards, Watson & Gershon. Execution may be by facsimile copy.

19. CAPTIONS AND HEADINGS:

Any captions or headings to the paragraphs or subparagraphs of this Agreement are solely for the convenience of the Parties, are not part of this Agreement, and shall not be used for the interpretation of or determination of the validity of this Agreement or any provision hereof.

20. AUTHORIZATION:

Each person signing this Agreement represents and warrants to the Parties and to each other that he or she is fully authorized to sign the Agreement on behalf of the Party for whom/which he or she is signing, and thereby to bind such Party to each and all of the terms of this Agreement.

21. WARRANTY OF NON-ASSIGNMENT:

The parties warrant that they have not assigned or transferred, nor will they in the future attempt to assign or transfer, any claim for relief or cause of action released herein.

22. TIME IS OF THE ESSENCE:

Time is expressly declared to be of the essence in this Agreement, and of every provision in which time is an element.

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23. SEVERABILITY:

Even if a court holds one or more parts of this Agreement ineffective, invalid, or void, all remaining provisions shall remain valid and in effect unless a party's consideration materially fails as a result of the invalidity.

24. EFFECTIVE DATE:

This Agreement shall be effective only if executed by all parties on or before June 18, 2009, and the Court enters Judgment pursuant to this Agreement on or before June 19, 2009.

IN WITNESS WHEREOF, the Parties have caused this Settlement Agreement and Stipulation for Entry of Judgment to be executed:

PARTIES:

ACCESS FOR ALL

Dated: 6/18/2009

By: Steve Hoyer
Executive Director

LISETTE ACKERBERG LIVING TRUST, dated January 14, 1998

By: Lisette Ackenberg
Trustee of the Lisette Ackenberg Living Trust, dated January 14, 1998

Dated: 6-18-09

LISETTE ACKERBERG

By: Lisette Ackenberg

Dated: 6-18-09

[APPROVAL AS TO FORM CONTINUED NEXT PAGE]

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Settlement Agreement and Stipulation for Entry of Judgment
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INW RICHARDS | WATSON | GERSHON
ATTORNEYS AT LAW - A PROFESSIONAL CORPORATION

1 **APPROVED AS TO FORM:**

2 DATED: June __, 2009

DIANE R. ABBITT
LAW OFFICES OF DIANE ABBITT

and

RICHARDS, WATSON & GERSHON
A Professional Corporation
STEVEN H. KAUFMANN
GINETTA L. GIOVINCO

By: _____

Steven H. Kaufmann

Attorneys for Defendants
LISETTE ACKERBERG LIVING TRUST, dated
January 14, 1998, and LISETTE ACKERBERG

11 DATED: June 14, 2009

12 DAVID J. WEINSOFF
13 LAW OFFICES OF DAVID WEINSOFF
and

14 NARDELL CHITSAZ & ALDEN LLP
15 J. TIMOTHY NARDELL

By: _____

David J. Weinsoff

Attorneys for Plaintiff
ACCESS FOR ALL

-15-

12674-00021144406v1.doc Settlement Agreement and Stipulation for Entry of Judgment

PROOF OF SERVICE

I, Yvonne Alamillo, declare:

I am a resident of the State of California and over the age of eighteen years, and not a party to the within action; my business address is Richards, Watson & Gershon, 355 South Grand, 40th Floor, Los Angeles, California. On June 18, 2009, I served the within documents:

SETTLEMENT AGREEMENT AND STIPULATION FOR ENTRY OF JUDGMENT

☐ by causing facsimile transmission of the document(s) listed above from (213) 626-8484 to the person(s) and facsimile number(s) set forth below on this date before 5:00 P.M. This transmission was reported as complete and without error. A copy of the transmission report(s), which was properly issued by the transmitting facsimile machine, is attached. Service by facsimile has been made pursuant to a prior written agreement between the parties.

☒ by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Los Angeles, California, addressed as set forth below. I am readily familiar with the firm's practice for collection and processing correspondence for mailing with the United States Postal Service. Under that practice, it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing contained in this affidavit.

☐ by placing the document(s) listed above in a sealed envelope and affixing a pre-paid air bill, and causing the envelope to be delivered to a agent for delivery, or deposited in a box or other facility regularly maintained by , in an envelope or package designated by the express service carrier, with delivery fees paid or provided for, addressed to the person(s) at the address(es) set forth below.

David J. Weinsoff, Esq.
Law Office of David J. Weinsoff
138 Ridgeway Avenue
Fairfax, California 94930
Tel: (415) 460-9760
Fax: (415) 460-9762
E-Mail: Weinsoff@ix.netcom.com

J. Timothy Nardell, Esq.
Nardell Chitsaz & Alden LLP
790 Mission Avenue
San Rafael, California 94901
Tel: (415) 485-2200
Fax: (415) 457-1420
E-Mail: tim@ncalcgal.com

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on June 18, 2009.


YVONNE ALAMILLO